

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00047
Petitioner: Kenneth J. Sledz
Respondent: Department of Local Government Finance
Parcel #: 009221201300009
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on November 17, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$287,300. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 26, 2004.
2. The Petitioner filed a Form 139L petition on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was held on August 27, 2004, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is located at 9306 West 89th Avenue, St. John, St. John Township, Lake County.
6. The subject property is a single-family residence.
7. The Special Master did not conduct an on-site visit of the property
 - a) Assessed Values of subject property as determined by the DLGF are:
Land \$49,400 Improvements \$237,900

- b) Assessed Values requested by Petitioner per the Form 139L are:
Land \$47,500 Improvements \$204,500
8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:
- For Petitioner: Kenneth J. Sledz, Petitioner
- For Respondent: Larry Vales, Cole-Layer-Trumble (CLT), representing the DLGF

Issues

10. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The square footage of the second floor of the dwelling is incorrect. The second floor square footage should be between 624 and 628 square feet. *Sledz testimony & Petitioner Exhibit 8.*
 - b) The model home upon which the subject house was based is assessed for \$33,000 less than the subject and yet it has many higher-grade features than the subject. *Sledz testimony & Petitioner Exhibit 9.*
 - c) The determined frontage and depth of the lot is incorrect. There is also a 25-foot easement with a four and one-half foot drop at the rear of the property. There is also a water drainage problem that runs down both sides of the parcel out to the sidewalk. *Sledz testimony & Petitioner Exhibit 3.*
 - d) Same or similarly sized lots on the subject’s street are assessed for a lesser amount. Larger and more preferred lots in better neighborhoods are also valued less than the subject. *Sledz testimony & Petitioner Exhibit 6.*
 - e) The grade of the subject dwelling is high. There are twenty-six (26) “C” grade features and five (5) “B” grade features in the subject house based on the Quality Grade Specification Tables set forth in Appendix A to the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines). This would equate to a high “C” grade rather than a “B” grade. *Sledz testimony & Petitioner Exhibit 10.*
 - f) The fireplace is a metal box with a chimney as opposed to a masonry fireplace. However, the subject house is assessed as having the latter. *Sledz testimony.*
11. Summary of Respondent’s contentions in support of the assessment:
- a. The highlighted grade features submitted by the Petitioner are common to both the “C” and “B” grades. The actual grade of the subject home is “B-1”. The

grade of the home doesn't fall into a "C" but is not a "B" grade either. *Vales testimony & Petitioner Exhibit 10.*

- b. The square footages of the house are incorrect and should be as follows:
Base area – 2,118 square feet
Second floor - 624 square feet
Attic - 550 square feet
Basement – 2,018 square feet
Garage – 550 square feet
Vales testimony.
- c. After requesting and getting a short recess to run some land calculations, the Respondent determined that the "effective depth" should be changed to 186 feet instead of 200 feet and the "effective frontage" should be 110 feet instead of 111 feet. *Vales testimony.*
- d. In addition, a negative 20 % influence factor should be applied to the land to address the drainage issue identified by the Petitioner. *Vales testimony.*
- e. As far as the comparison of the subject dwelling to the model home, the model home is in a different neighborhood. *Vales testimony.*
- f. The fireplace should be assessed as a metal box-type fireplace rather than as a masonry fireplace. *Vales testimony.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition, and all subsequent submissions by either party.
- b) The tape recording of the hearing labeled Lake Co # 382.
- c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition

Petitioner Exhibit 2: Summary of Petitioner's arguments

Petitioner Exhibit 3: Mortgage Inspection Survey by Torrenga Engineering

Petitioner Exhibit 4: Subject's 1995 property record card (PRC)

Petitioner Exhibit 5: PRC for Parcel #009-22-12-0146-0003

Petitioner Exhibit 6: Land assessment information for Parcels #009-22-12-0146-0004, #009-22-12-0146-0002, and #009-22-12-0110-0018

Petitioner Exhibit 7: Subject PRC

Petitioner Exhibit 8: Diagram of the second floor of the subject dwelling

Petitioner Exhibit 9: PRC and builder's advertisement for the model home (Parcel #009-22-12-0108-0008)

Petitioner Exhibit 10: Real Property Assessment Guideline, Appendix A, pages 10 thru 14

Respondent Exhibit 1: Form 139L petition

Respondent Exhibit 2: Subject PRC for 2002 reassessment

Respondent Exhibit 3: Letter regarding overall land values for neighboring area¹

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws are:

- a) A Petitioner seeking review of a determination of the assessing officials has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). In the case of a challenge to the grade assigned to an improvement, the taxpayer must submit probative evidence of what his grade should have been in order to establish a prima facie case. *Sollers Pointe Company v. Department of Local Government Finance*, 790 N.E.2d 185, 191, n.11 (Ind. Tax Ct. 2003).
- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

14. At the hearing, the Petitioner and Respondent agreed to the following changes:

¹ At the hearing the Respondent agreed to provide information contained Respondent Exhibit 3 subsequent to the hearing. However, the letter does not indicate that it was served on the Petitioner as required by 52 IAC 2-8-8(c). The Board therefore does not consider Respondent's letter in issuing its determination.

- a. The parties agreed that the square footage measurements of the house were incorrect and should be changed to:
 - First floor – 2,118 square feet
 - Second floor - 624 square feet
 - Attic - 550 square feet
 - Basement – 2,018 square feet
 - Garage – 550 square feet
 - b. The parties agreed that the fireplace should be valued as a prefabricated steel type as opposed to masonry.
 - c. The parties agreed to the following changes with regard to the subject land: (1) that the effective frontage should be 110 feet; (2) that the effective depth should be 186 feet, and (3) that a negative influence factor of 20% should apply.
15. The Petitioner did not provide sufficient evidence to support his contention that the value of the subject improvements should be reduced beyond the above described agreed reductions. This conclusion was arrived at because:
- a) The Petitioner makes essentially two (2) arguments in support of a further reduction in the value of the subject house. First, the Petitioner compares the subject house to what he describes as the “model home” upon which the subject house was based. According to the Petitioner, the fact that the model home is assessed for \$33,000 less than the subject house shows that the assessment of the subject house is incorrect. Next, the Petitioner contends that the Respondent applied an inappropriate grade to the subject house. The assessed grade is “B-1.” The Petitioner contends that the appropriate grade is “C.”
 - b) With regard to the first contention, the Petitioner failed to present sufficient evidence to establish the comparability of the model house to the subject house. In essence, the Petitioner is attempting to rely upon an analysis similar to the sales comparison approach used by professional appraisers. Under the sales comparison approach, an appraiser “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” 2002 REAL PROPERTY ASSESSMENT MANUAL 3 (2001 (incorporated by reference at 50 IAC 2.3-1-2)(hereinafter “Manual”); *Long v. Wayne Township Assessor*, Cause No. 49T10-0404-TA-20, at 4 (Ind. Tax Ct. corrected original opinion dated January 28, 2005). However, instead of relying on *sales* of comparable properties to establish the market value-in-use of the subject property directly, the Petitioner seeks to establish such value indirectly by looking at the *assessed* value of comparable properties.
 - c) In order to effectively use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long*, at 7. Instead, the party seeking to rely on a sales

- comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Long* at 8. That party must also explain how any differences between the properties affect their relative market values-in-use. *See id.*
- d) Although the Petitioner testified that the subject home and the model were identical, an examination of the PRCs for each property shows some significant differences. For example, the subject house has 550 square feet of attic area whereas the model house has no attic. The subject house also has a considerably larger wood deck (545 square feet versus 270 square feet) a larger enclosed frame porch (256 square feet versus 160 square feet) than the model home. *Petitioner Exhibit 9 & Respondent Exhibit 2*. The Petitioner made no attempt to adjust for any of those differences.
 - e) Moreover even if the Petitioner had sufficiently established the comparability of the subject house and the model home and adjusted for significant differences between the two, the comparison between the two properties shows only that one of the two is improperly assessed. This begs the relevant question – which, if either, of the two assessments reflects the fair market value-in-use of the subject property.
 - f) The Petitioner also failed to establish a prima facie case that the Respondent applied an improper grade in assessing the subject property.
 - g) Under Indiana’s true tax value system, improvements are assigned various grades based upon their design and the quality of their materials and workmanship. *Sollers Pointe Co.*, 790 N.E. 2d at 190. “Construction quality and the resultant quality grade assigned is a composite characteristic.” Guidelines, at Appendix A p. 3. The Guidelines provide quality grade specification tables to assist in the determination of appropriate quality grades. *Id.* at 9. The descriptions in those tables are intentionally general and emphasize the most prominent elements dwelling units within a particular grade. *Id.* Although the construction quality of individual components of an improvement may vary, the overall construction quality tends to be consistent for the entire residence. *Id.*
 - h) The Petitioner submitted a copy of the quality grade specification tables from the Guidelines in support of his position that the subject house should have received a “C” grade. *Petitioner Exhibit 10*. The Petitioner highlighted a grade description for most of the categories listed on that table. *Id.* The Petitioner testified that the highlighted portion represented the features of the subject house and the grade category into which those features should be assigned. For example, in the category for masonry siding, the Petitioner highlighted the entry under the “C” grade column for “brick or stone veneer. *Sledz testimony & Petitioner Exhibit 10*.
 - i) In most instances, the Petitioner read the generic description set forth in the tables and asserted that the features of the subject house matched that description. For example the Petitioner simply asserted that the subject house had “average grade fixtures.” *Sledz testimony*. In a few instances, the Petitioner provided a more detailed

description of features at issue, such as his testimony that his kitchen cabinets did not even have “pulls.” *Sledz testimony*. The Petitioner added up the features in each category and concluded that there were twenty five (25) “C” grade features, five (5) “B” grade features and five (5) “D” grade features. *Sledz testimony & Petitioner Exhibit 10*. The Petitioner argued that this predominance of “C” grade features supported the conclusion that the appropriate grade for the subject house is “C.” The Petitioner further asserted that the features of the subject house compared unfavorably to those of the model home in every instance.

- j) Conclusory statements such as the home has “average grade fixtures” do not constitute probative evidence. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1120 (Ind. Tax 1998). While the Petitioner did present slightly more detailed descriptions of a few of the features of the subject house, such as its kitchen cabinets, electrical outlets, sheathing and soffits, he did not relate how these features contributed to the overall design of the house and the quality of its materials and workmanship. In fact, the Petitioner appears to assign the same weight to major design factors such as the fact that the subject house was custom built as he does to the number and type of outlets found within the house.
- k) Moreover, the Petitioner’s claim that the subject house has twenty five (25) “C” grade features as opposed to only five (5) “B” grade features lacks probative value. Twenty (20) of the twenty five (25) features identified by the Petitioner as falling within the description of a “C” grade may also meet the descriptions of “A” and “B” grades. *See Guidelines, Appendix A at 10-14*. For example “brick or stone veneer” meets the masonry siding specifications for all three grades. *Id.*, at 10.
- l) The Petitioner’s attempt to establish a “C” grade by comparing the features of the subject house to those of the model home is equally unavailing. The Petitioner simply asserted that the subject house compared unfavorably to the model home in all respects. *Sledz testimony*. The Petitioner apparently contends that the comparison of the two houses justifies the assignment of a lower grade to the subject house than the “B-1” assigned to the model home.
- m) However, the Petitioner did not provide any explanation comparing the workmanship and design of the two houses aside from stating that the model home has more brick, more expensive siding and more expensive windows than the subject house and that the model home has a sun room whereas the subject house has only a porch. *Sledz testimony*. Once again, conclusory statements such as these do not constitute probative evidence. *See Whitley Products*, 704 N.E.2d at 1120. Moreover, even if the Petitioner were correct in his assertion that the two houses should not both be assigned a grade of “B-1,” that conclusion begs the question of whether the model home should be graded higher or the subject house should be graded lower.
- n) Petitioner therefore has failed to present sufficient probative evidence to establish what the appropriate grade of the subject house should be. *See Sollers*, 790 N.E.2d at 191, n.11.

Conclusion

17. The parties agreed to changes in the square footages of the dwelling, to correcting the assessment of the fireplace, to changes in the front foot assessment of the subject parcel, and the application of a negative influence factor. See ¶15.
18. The Petitioner failed to establish a prima facie case to support a reduction in the assessed value of the subject property beyond the reductions resulting from the above-specified agreement between the parties. .

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment shall be changed to reflect the following:

- a) Changes shall be made to reflect the following measurements for the subject improvements: First floor – 2,118 square feet; Second floor - 624 square feet
Attic - 550 square feet; Basement – 2,018 square feet; Garage – 550 square feet.
- b) The fireplace shall be valued as a Prefab Steel type as opposed to masonry.
- c) The effective frontage of the subject land shall be changed to 110 feet, the effective depth shall be changed to 186 feet, and a negative influence factor of 20% shall be applied.
- d) The assessed value of the land and improvements shall be changed in accordance with these modifications.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.